

FILED

August 9, 2007

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

PRISCILLA G. ILEM, M.D.

FINAL ORDER

This matter was reopened before the New Jersey State Board of Medical Examiners (the "Board") upon the filing of an Initial Decision by A.L.J. Jesse H. Strauss, and the Board's subsequent receipt of exceptions to said decision from both respondent Ilem and the Attorney General. Upon consideration of the filed exceptions and upon our independent review of this matter, we have concluded that cause exists to adopt in their entirety the findings of fact and conclusions of law made by A.L.J. Strauss, and to adopt his recommendations: 1) that Dr. Ilem be assessed a civil penalty in the amount of \$13,000 and costs, to include attorneys fees, in the amount of \$27,804.76; 2) that Dr. Ilem be required to attend a record-keeping course deemed appropriate by the Board; and 3) that Dr. Ilem's record-keeping be subject to monitoring by the Board. We have further concluded, however, that cause exists to modify A.L.J. Strauss' recommendations as to sanctions, and to specifically order that Dr. Ilem be formally reprimanded for the misconduct in which she was found to have engaged. We set forth below a summary of the

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procedural history of this matter, and the rationale for our determination to supplement A.L.J. Strauss' sanction recommendations.

Procedural History

On December 12, 2005, the Attorney General filed an administrative Complaint with the Board, wherein he alleged that Dr. Ilem had issued multiple prescriptions for controlled dangerous substances ("CDS") during a time period when her registration to prescribe CDS had been surrendered to the federal Drug Enforcement Agency (the "DEA"), and that Dr. Ilem had submitted a falsified medical record to the Board during the course of a Board investigation of her conduct. Respondent filed an Answer to the Complaint on December 22, 2005, and the matter was then transferred to the Office of Administrative Law.¹

The Attorney General sought resolution of this matter by way of summary decision, contending that there were no genuine issues of material fact and that he was entitled to prevail on the Complaint as a matter of law. That motion was granted, on August 29, 2006, upon the entry of a written decision and order. A.L.J. Strauss then found that respondent had illegally written 23

¹ An amended Complaint was filed on April 21, 2006, wherein the Attorney General alleged that Dr. Ilem had written additional prescriptions for CDS at times that her DEA registration was surrendered. In total, the Attorney General alleged that respondent wrote 23 CDS prescriptions, for nine patients, at times that she did not hold a valid DEA registration.

prescriptions for CDS at times that she did not hold a valid DEA registration (i.e, after she had surrendered her DEA registration).²

A.L.J. Strauss also entered summary decision for the Attorney General on his claim that respondent submitted falsified medical records to a Preliminary Evaluation Committee of the Board (the "PEC"). Specifically, A.L.J. Strauss found that records for patient L.S., which purported to memorialize visits made on June 22 and June 28, 2004, were in fact falsified records. As set forth in greater detail in A.L.J. Strauss' written decision, those records were not produced when Dr. Ilem first appeared before a PEC, although Dr. Ilem did then produce patient records for L.S. which documented patient visits that occurred on June 14, 2004 and July 1, 2004 and did then represent under oath to the PEC that she was producing her complete record for patient L.S. The entries for the June 14, 2004 and July 1, 2004 visits were set out on the same page of L.S.' patient record, and there was no gap between those entries.

Approximately three weeks after her PEC appearance, Dr. Ilem produced a single handwritten sheet of paper on which notes for the dates June 22 and June 28, 2004 were included. Dr. Ilem

² As recounted in the Order granting partial summary decision, respondent's DEA registration was subsequently restored in July 2005; all of the prescriptions at issue in this matter were written in the time period between February 6, 2001 and July 21, 2005.

then claimed through counsel that she found the additional records behind several file cabinets in her office. A.L.J. Strauss specifically rejected Dr. Ilem's denial that she falsified the records, instead concluding that overwhelming evidence existed which supported a conclusion that the records that she submitted after her PEC appearance were in fact falsified.

The only matter that was left unresolved following A.L.J. Strauss' grant of partial summary decision was the determination of sanctions to be assessed. A mitigation hearing was held on October 13, 2006, at which hearing Dr. Ilem presented eight witnesses, to include patients, family members of patients and colleagues. Dr. Ilem also testified on her own behalf. Following that hearing,

A.L.J. Strauss entered a final Order, wherein he made recommendations that the Board assess an administrative fine of \$13,000 and assess costs, to include attorneys' fees, in an aggregate amount of \$27,804.76, against Dr. Ilem. A.L.J. Strauss additionally recommended that Dr. Ilem should be required to attend any record-keeping course(s) the Board might deem appropriate, and that her record-keeping practices should be subject to monitoring by the Board. A.L.J. Strauss did not, however, recommend that any affirmative disciplinary sanction (i.e., a revocation or suspension of license, and/or imposition of a reprimand) be imposed in this matter.

Exceptions to A.L.J. Strauss' initial decision were

thereafter filed by the parties. Neither respondent nor the Attorney General filed any exceptions to the proposed findings of fact and conclusions of law that were made by A.L.J. Strauss. Rather, the only issue on which both sides took exception was the issue of penalty to be assessed.

The Attorney General argued, in a letter dated February 9, 2007, that the Board should modify A.L.J. Strauss's determination not to impose any disciplinary sanction against respondent. The Attorney General suggested that, when declining to impose any sanction (other than a monetary penalty), A.L.J. Strauss placed over-reliance on the lack of any demonstrable patient harm, and failed to give proper weight to his finding that respondent submitted a fraudulent patient record to the Board.

In a letter dated February 13, 2007, respondent asked that the Board consider reducing the amount of fines and counsel fees that were assessed in the matter. Mr. Brickfield argued that any assessment of fines and attorney's fees were within the discretion of the Board, and argued that the total assessments imposed by the A.L.J. placed an excessive burden on respondent, who is 79 years old, practices part-time and provides reduced fee or no charge services to certain patients without health insurance. Mr. Brickfield also suggested that the Board could reduce the fine based on the mitigation showings and A.L.J. Strauss' dual findings that Dr. Ilem's actions were without improper purpose or motive,

and that no patient was harmed or inappropriately treated by Dr. Ilem.

The matter was set down for final consideration before the Board on April 11, 2007. On said date, both parties were afforded an opportunity to supplement their written submissions with oral arguments of counsel. Paul B. Brickfield, Esq., then appeared on behalf of respondent Ilem, and David M. Puteska, Deputy Attorney General, appeared on behalf of complainant Stuart Rabner, Attorney General of New Jersey.

*Determination to Modify A.L.J. Strauss'
Penalty Recommendations*

We unanimously conclude that cause exists in this case to ~~modify the recommendation made by A.L.J. Strauss, and to order~~ that, in addition to the cost and penalty assessments made in the Initial Decision, Dr. Ilem be formally reprimanded based on the findings of misconduct which were made. Specifically, we conclude that Dr. Ilem's misconduct, in particular her submission of falsified medical records to this Board during the course of an investigation of her practice, clearly warrants rebuke and supports the entry of an affirmative sanction.

A.L.J. Strauss found that Dr. Ilem wrote 23 prescriptions for C.D.S. at times that she did not possess, and knew she did not possess a valid DEA registration. He also found that Dr. Ilem knowingly submitted falsified medical records to a Committee of the Board attempting to investigate her conduct. Respondent's

submission of falsified medical records to the Board was found to be conduct which constituted the use of dishonesty, fraud, deception or misrepresentation, and thus was found to be a violation of N.J.S.A. 45:1-21(b).

Taken together, the findings made at the Office of Administrative Law bespeak a contumacious disregard on Dr. Ilem's part for both the authority of the DEA and the authority of this Board. The finding that no harm befell any of the patients treated by Dr. Ilem is not a finding sufficient to divest the Board of the authority to affirmatively sanction Dr. Ilem for the misconduct in which she engaged. Indeed, as the Supreme Court recognized In re Zahl License Revocation, 186 N.J. 341 (2006), dishonesty is a sufficient basis to justify license revocation, and the Board may, in appropriate cases, order the revocation of medical licensure even in the absence of any finding of patient harm.

In this case, we are satisfied on balance that the appropriately measured sanction for Dr. Ilem's misconduct is the imposition of a reprimand. In reaching that conclusion, we find, as did A.L.J. Strauss, that the showings that were made by Dr. Ilem in mitigation of penalty were substantial, and militate against the imposition of an order revoking or suspending her license. We specifically reject, however, A.L.J. Strauss' determination not to impose an affirmative sanction against Dr. Ilem, and instead order that she receive a formal reprimand.

WHEREFORE, it is on this 8th day of August, 2007

ORDERED:

1. All findings of fact and conclusions of law made in this matter by A.L.J. Strauss are adopted in their entirety, without modification.

2. On the specific issue of sanction, we modify (and clarify) the recommendations made by A.L.J. Strauss, and hereby impose the following penalties upon respondent:

a) Respondent Priscilla Ilem is hereby formally reprimanded for having written twenty-three prescriptions for Controlled Dangerous Substances at times that she did not possess a valid DEA registration, and for having submitted falsified patient records to the Board during the pendency of a Board investigation of her practice.

b) Respondent Priscilla Ilem is assessed a civil penalty in the amount of \$13,000, which penalty shall be payable in full within fifteen days of the entry of this Order.

c) Respondent Priscilla Ilem is assessed costs, to include attorney's fees and costs of investigation, in the aggregate amount of \$27,804.76, which costs shall be payable in full within fifteen days of the entry of this Order.

d) Respondent shall, on a quarterly basis, submit ten patient charts for review by the Medical Director of the Board or by a Committee of the Board, for a period of not less than one

year. The first record submission shall be made three months from the date of entry of this Order. Following one year, the Board, in its discretion, may determine whether cause exists to continue, discontinue or modify the requirements of this paragraph.

e) Respondent shall complete a course in medical record-keeping, acceptable to the Board, within six months of the date of entry of this Order.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: 

Karen Criss, C.N.M.
Board Vice-President